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IN THE DISTRICT COURT OF GUAM

Defendants.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
HSBC's *EX PARTE* APPLICATION
FOR LETTERS OF REQUEST FOR
TAKING THE DEPOSITION AND
PRODUCTION OF DOCUMENTS OF
HARESH MUKHI IN THE UNITED
ARAB EMIRATES**

Mr. Haresh Mukhi is an employee or owner of Mayura Khamas Stores L.L.C.. He has been identified by Plaintiffs as a witness in their Responses and Objections to Defendant's First Set of Interrogatories. See, Exh. "2" attached to the Declaration of Jacques G. Bronze. Mr. Mukhi is believed to have substantial relevant discoverable information based on Plaintiffs'

responses to HSBC's First Set of Interrogatories to K. Sadhwani's Inc.. See, ¶ 6 of Declaration of Jacques G. Bronze. He will be asked to produce certain documents and be examined on, and amongst other matters, his or his company's involvement and knowledge of any negotiations and/or agreements relating to any replacement or alternative financing of Plaintiffs' loan with HSBC.

Accordingly, HSBC seeks a letter of request and the assistance of the judicial authorities of the United Arab Emirates ("UAE"), to serve and/or direct the taking of the deposition of Mr. Jadwani on oral examination and the production of certain documents.

F.R.C.P. Rule 28(b) provides:

Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate

...

Here, a letter of request is necessary for the deposition of Mr. Mukhi to be taken in Dubai in the UAE where he resides and works. The taking of the testimony of a witness and other evidence in relation to a case pending before foreign courts may be allowed pursuant to a letter of request from this Court on the basis of reciprocity and judicial comity, but subject to such rules laid down by UAE judicial authorities. At the same time, there is no reason that such a letter of request should not issue: Mr. Mukhi has highly pertinent information directly relevant to essential issues and disputes in this proceeding. In re: The Matter of Central Gulf Lines, Inc.,

2000 WL 713185 *3 (E.D. La. 2000) (granting motion for issuance of letters of request to Kingdom of Norway to depose certain witnesses, after recognizing mandatory language of Rule 28(b) that letter of request "shall" be issued on application and notice on terms that are just and appropriate); DBMS Consultants, Ltd. v. Computer Associates Int'l, Inc., 131 F.R.D. 367, 269 (D. Mass. 1990). Moreover, a U.S. Court has authority to compel production of documents. See, Societe Internationale v. Rogers, 357 U.S. 197, 206-07, 78 S.Ct. 1087, 1092-93, 2 L.Ed.2d 1255 (1958); In re Societe Nationale Industrielle Aerospatiale, 782 F.2d 120, 126 (8th Cir. 1986); United States v. First National City Bank, 396 F.2d 897, 901 (2nd Cir. 1968); International Society for Krishna Consciousness v. Lee, 105 F.R.D. 435, 445 (S.D.N.Y. 1984); and In re Uranium Antitrust Litigation, 480 F.Supp. 1138, 1145 (N.D. Ill. 1979).

Based upon the foregoing, and on the attached Declaration of Jacques G. Bronze, HSBC respectfully requests that this Court issue a Letter of Request authorizing and appointing the appropriate judicial authority of the UAE to direct the taking of the deposition of Mr. Haresh Mukhi on oral examination and production of documents in the form of the Letters of Request For Taking the Deposition and Production of Documents of Haresh Mukhi in the UAE.

DATED this 30th day of June 2004.

LAW OFFICES OF BRONZE & TANG
A Professional Corporation

By: _____


JACQUES G. BRONZE
Attorneys for Defendant HSBC

CERTIFICATE OF SERVICE

I, JACQUES G. BRONZE, hereby certify that on June 30, 2004, I caused to be served via hand delivery, **HSBC's Notice of Ex Parte Application and Ex Parte Application for Letters of Request For Taking the Deposition and Production of Documents of Haresh Mukhi in the United Arab Emirates; Memorandum of Points and Authorities in Support of HSBC's Ex Parte Application; and Declaration of Jacques G. Bronze in Support of HSBC's Ex Parte Application** to:

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Attorneys for Plaintiffs

DATED: June 30, 2004.

LAW OFFICES OF BRONZE & TANG
A Professional Corporation

By: 

JACQUES G. BRONZE

Attorneys for Defendant HSBC